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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170717675-7999-02]

RIN 0648-XF571

Fisheries of the Northeastern United States; Golden Tilefish Fishery; 2018 and Projected 2019-2020 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2018 commercial golden tilefish fishery and projected specifications for 2019 and 2020. This action establishes allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan. It is also intended to inform the public of these specifications for the 2018 fishing year and projected specifications for 2019-2020.

DATES: Effective November 2, 2017 through October 31, 2018.

ADDRESSES: Copies of these specifications, including the Environmental Assessment, Regulatory Flexibility Act Analyses, and other supporting documents for the action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management

Specialist, (978) 281-9180.

SUPPLEMENTARY INFORMATION:

Background

The golden tilefish fishery is managed by the Mid-Atlantic Fishery Management Council under the Tilefish Fishery Management Plan (FMP), which outlines the Council's process for establishing annual specifications. Regulations implementing the Tilefish FMP appear at 50 CFR part 648, subparts A and N, which require the Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures, for up to three years at a time. On September 7, 2017, NMFS proposed 2018-2020 specifications for the golden tilefish fishery (82 FR 42266) based on Council recommendations, and accepted public comment through September 22, 2017. Additional background information regarding the development of these specifications was provided in the proposed rule and is not repeated here.

Final Specifications

This action implements the approved ABCs, catch limits, and quota limits for the commercial golden tilefish fishery for the 2018 fishing year (Table 1), and projects specifications for fishing years 2019 and 2020 (Table 2), as outlined in the proposed rule. By providing projected quotas for 2019 and 2020, NMFS hopes to assist fishery participants in planning ahead. The Council will review these specifications annually, and NMFS will provide notice prior to each fishing year to announce any necessary changes for 2019 and 2020. These specifications are approximately 14 percent lower than the 2017 ABC and overall commercial quota to ensure overfishing does not occur. For more information on the Council's recommendations and decisionmaking process, please see the proposed rule (82 FR 42266).

As explained in the proposed rule, the Mid-Atlantic Council developed these specifications in parallel with Framework Adjustment 2 to the Tilefish FMP. Framework 2 would revise how assumed discards are deducted in the specifications setting process, and the Council developed these specifications based on that new method. However, implementation of Framework 2 was delayed, and a proposed rule to implement Framework 2 is pending. Because the revision to the specification process has not been finalized, this action implements the 2018 golden tilefish specifications based on current regulations. For clarity, we also provide details of how the 2018 specifications would be changed under the process proposed by Framework 2 (Table 1). If Framework 2 is implemented as proposed, the 2018 specifications would be adjusted accordingly during the fishing year. This would result in a slight decrease in the incidental TAL and a slight increase to the IFQ TAL and by extension to individual IFQ allocations. The proposed 2019 and 2020 specifications in Table 2 anticipate the implementation of Framework 2.

Table 1. 2018 Golden Tilefish Specifications as implemented by this action, and potential revisions under Tilefish Framework Adjustment 2

	As implemented		Under Framework 2	
	million lb	mt	million lb	mt
Overfishing Limit	2.332	1,058	2.332	1,058
ABC	1.636	742	1.636	742
ACL	1.636	742	1.636	742
IFQ ACT	NA	NA	1.554	705
Incidental ACT	NA	NA	0.082	37
TAL	1.627	738	NA	NA
IFQ TAL	1.546	701	1.554	705
Incidental TAL	0.081	37	0.072	33

Table 2. Proposed 2019 and 2020 Golden tilefish Specifications

	2019		2020	
	million lb	mt	million lb	mt
Overfishing Limit	2.421	1,098	2.291	1,039
ABC	1.636	742	1.636	742

ACL	1.636	742	1.636	742
IFQ ACT	1.554	705	1.554	705
Incidental ACT	0.082	37	0.082	37
IFQ TAL	1.554	705	1.554	705
Incidental TAL	0.072	33	0.072	33

As in previous years, no golden tilefish quota has been allocated for research set-aside. All other management measures in the golden tilefish fishery will remain unchanged for the 2018-2020 fishing years. The incidental trip limit will stay 500 lb (226.8 kg) (live weight), and the recreational catch limit will remain eight fish per-angler, per-trip. Annual IFQ allocations will be issued to individual quota shareholders in mid-October, before the November 1 start of the fishing year.

Comments and Responses

The public comment period for the proposed rule ended on September 22, 2017. Five comments were received from the public on this rule.

Comment 1: Three commenters wrote in support of this action and the reduction in quotas. They mentioned the importance of preemptive measures to preserve fish populations and ecosystems from overfishing while maintaining sustainable fishing practices.

Response 1: NMFS agrees. It is important to use the best available science to maintain healthy fish stocks and sustainable fishing practices. The Council's risk policy was applied to the most recent assessment outputs in the development of these specifications consistent with National Standard 2 and the Magnuson-Stevens Act. This resulted in a recommended reduction in quota even though golden tilefish are not currently overfished or experiencing overfishing.

Comment 2: One commenter questioned the necessity of quota reductions when overfishing is not occurring, and requested more information about Tilefish Framework Adjustment 2.

Response 2: As explained in the proposed rule and the response to Comment 1, catch limits and quotas are being reduced a result of the application of the Council's risk policy to the best available science to prevent overfishing from occurring in the golden tilefish fishery. The commenter is correct, the golden tilefish stock is not considered overfished or subject to overfishing; but this action is working to maintain that status into the future. Framework Adjustment 2 is currently in development through a separate rulemaking process, and does have more background information on the topics in question. The proposed rule is expected to publish in October; however, in the interim, more information can be found on the Council website at <http://www.mafmc.org/tilefish/>.

Comment 3: The commenter recommended a more drastic cut in quotas and claimed widespread corruption and collusion between NMFS and the commercial fishing industry for unregulated profit.

Response 3: The commenter presented no rationale or evidence supporting the claims. The most recent assessment determined that the golden tilefish stock is neither overfished, nor subject to overfishing. The Council's recommended quotas were set below the overfishing limit from the stock assessment in order to account for any scientific uncertainty. NMFS used the best scientific information available and is approving specifications for the golden tilefish fishery that are consistent with the FMP, all applicable legal requirements, and the recommendations of the Council.

Changes from the Proposed Rule

As explained above, the proposed rule anticipated the implementation of Framework 2 before these specifications were finalized. Because that has not happened, the specifications must be implemented under current regulations, but will be adjusted when Framework 2 is

finalized near the end of December 2017.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness period for this rule, to ensure that the final specifications are in place as close to the start of the 2018 golden tilefish fishing year as possible, which began on November 1, 2017. A delay in effectiveness past the start of the 2018 fishing year would be contrary to the public interest, as it could create confusion, added burden, and potential economic harm to the commercial golden tilefish industry. If new specifications are not effective on that date, the regulations at § 648.292(a) state the current harvest quotas would automatically continue into the new fishing year. Therefore, NMFS would be required to issue initial IFQ permits using the 2017 quota amount, and then reissue those permits using the lower 2018 quota implemented by this rule after the start of the fishing year. Representatives of the commercial golden tilefish industry have been active participants in the Council's development of these specifications, and are anticipating the 2018 quota amount implemented by this action. Issuing two sets of IFQ allocations based on different quota amounts in a short period of time

would cause unnecessary confusion and paperwork for the commercial golden tilefish industry. If IFQ shareholders fished or leased their initial allocation in the interim, they could be responsible for a quota overage once the new 2018 quotas became effective. Under the regulations, such an overage would need to be paid back in the following fishing year, which would decrease fishing opportunities in 2019.

Because the Council did not submit these specifications recommendations and the accompanying environmental assessment until early July, NMFS was unable to prepare this action early enough to allow for both an appropriate public comment period and full delay in effectiveness period. As noted above, the commercial tilefish industry has been a participant in the Council's process of developing these specifications and is anticipating these measures. Therefore, there is good cause to implement these quota specifications on November 2, 2017.

Final Regulatory Flexibility Analysis

The final regulatory flexibility analysis (FRFA) included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the initial regulatory flexibility analysis (IRFA) and a summary of analyses completed to support the action. A public copy of the environmental assessment/IRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

The comments NMFS received did not raise specific issues regarding the economic analyses summarized in the IRFA. Refer to the "Comments and Responses" section of this

preamble for more detail. No changes to the proposed rule were required to be made as a result of public comment.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This final rule affects small entities engaged in commercial fishing operations with Federal golden tilefish permits. For the purposes of the regulatory flexibility analysis (RFA) analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Because of this, some vessels with golden tilefish permits may be considered to be part of the same firm because they may have the same owners. In terms of RFA, a business primarily engaged in commercial fishing is classified as a small business if it has combined annual receipts not in excess of \$11 million, for all its affiliated operations worldwide. The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available) and contains average gross sales associated with those permits for calendar years 2014 through 2016. According to the commercial ownership database, 148 affiliate firms landed golden tilefish during the 2014-2016 period, with 145 of those business affiliates categorized as small, and 3 as large businesses.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

Specification of commercial quota is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. The 2018-2020 catch limits and quotas contained in this final rule are 14 percent lower than

those currently in place for 2017. However, this is the result of the Council's risk policy, which requires a formulaic buffer between the OFL and ABC that, in turn, lowers the TAL and quotas. Therefore, these lower catch levels in 2018 and projected for 2019 and 2020 are consistent with the best available scientific information, the Council's tolerance for overfishing risk, and are intended to prevent overfishing from occurring.

As described in the proposed rule for this action, two other alternatives to the approved these specifications were considered. The status quo specifications (Alternative 2) were not consistent with the Council's risk policy. Alternative 3 would have had a comparable quota decrease over the three years with the approved specifications (Alternative 1), but fluctuating quotas and catch limits year to year. This was not selected because it did not support the annual consistency of quota/landings that the tilefish industry considers important to maintaining price and supply stability in this fishery.

All affected IFQ shareholders will receive decreases in their tilefish 2018 IFQ allocations in comparison to their respective tilefish 2017 IFQ allocations. However, the magnitude of the decrease varies depending on the shareholder's relative percentage of the total IFQ quota. Shareholders may also seek leases to offset individual quota decreases. NMFS does not anticipate this decrease will create a significant impact on the entities affected by this action.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As

part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide was prepared and will be sent to all holders of Federal permits issued for the golden tilefish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website:

www.greateratlantic.fisheries.noaa.gov.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service

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